

REMARKS

In the office action, all of the claims were rejected under 35 U.S.C. 103a as being obvious over Ballard (3,595,339) in view of Murray (2,206,234).

103(a) argument:

It is respectfully submitted that the application as herein claimed cannot be rejected for want of a prima facie showing of obviousness.

It is respectfully submitted that the invention as herein claimed is unobvious over the prior art for the following reasons:

The scope and content of the prior art:

'339 teaches "a latching foot step plate 13, latch straps 14a,14b," (col.2, line 4). The foot rests on the step plate 13 and "foot strap means" (col. 4, line 33) connects the foot to the plate so that the user can lift up the apparatus with his foot as he takes a step. As he steps, there is no compression or expansion of the spring. This is opposite teaching. Spring action is only for changing elevation of the stilt. The spring action only takes place when the user wishes to change the elevation of the stilts. To change elevation, rotation of the foot within the boot housing 10 disengages the latch to free the plate to move up or down within 10. When the desired elevation is reached, the foot and plate 13, tied to it by straps 14, is rotated to the latch position. Any addition of slide tubes taught by '234 to the apparatus of '339, as suggested by the Examiner, would prevent the apparatus from maintaining the elevation required for the purpose intended by '339. Stilts that don't keep the user up high are not very useful stilts. The side tubes, depending on the position, might interfere with the latching and unlatching required by '339. The subfloor portion of '339 would be item 23 that is in contact with the floor, not step plate 13. Furthermore, the addition of '234 does not add the claimed element "a pair of elongate tubular elements affixed to, and extending upwards from, the subfloor portion". The tubular elements 5 of '234 are not affixed to subfloor 2. They ride up and down on upright members 2b and 2c affixed to the subfloor 2. "to permit movement of the members 3c relative to the members 2b and 2c with the compression of the spring 4" (col.3, line 19).

There is no teaching in '339 for a mounting of elements to the leg below the knee for taking forces off the foot and ankle while stepping. It would be opposite his constant level teaching. To expect a patient with an injured leg to somehow twist the leg with each step would probably cause additional injury instead of promoting recovery.

In summary, many claimed elements are absent from the combination proposed by the Examiner. This is evidence of unobviousness.

Since the combination lacks elements of the claims, is opposite teaching, and does not operate as intended, it is therefore unobvious. In re Clinton, 527 F.2d, 188 USPQ365 (CCPA 1976).

The teaching or suggestion to make the claimed combination and a reasonable expectation of success must both be found in the prior art, and not based upon Applicant's disclosure. In re Vaack, 947 F.2d 1438 (Fed. Cir. 1991).

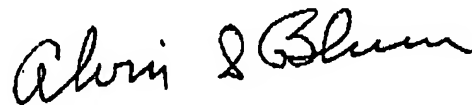
If the proposed modification or combination of the prior art would change the principal of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims prima facie obvious. In re Ratti, 270 F.2d 810, 123USPQ 349(CCPA 1959).

The showing of suggestion to combine must be clear and particular. The Examiner has made no such showing. In re Dembicziak, 175 F.3d 994, 50USPQ 2d. 1614(Fed. Cir. 1999).

The references cited, but not relied upon have been studied. They do not teach or suggest the claimed invention either alone or in combination. Reference listed as Godwin No. 3,278 could not be found. Reference listed as Chapel No.4,088,3326 should have been 4,088,336.

In view of the foregoing, allowance of the claims and passing of the application to issue is respectfully solicited. If there are any comments, questions or suggestions to be made, the examiner is respectfully invited to telephone the applicant's representative at the telephone number given below for prompt disposition of any still outstanding matters. Reconsideration is respectfully requested.

RESPECTFULLY SUBMITTED,



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